IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2814 OF 2003

Haffkine Bio-Pharmaceuticals
Corporation Ltd. ..Petitioner.

Vs.

Madhav Shriram Sant & anr. ..Respondents.

...

Mr. N.R. Patankar with Mr. Vishwajit Sawant for the Petitioner.
Mr. N.M. Ganguli for the Respondents.

....

CORAM: DR. D.Y. CHANDRACHUD, J.

11th September, 2006.

ORAL JUDGMENT :

1. This Petition is directed against an order passed by the Labour Court on an application under Section 33C(2) of the Industrial Disputes Act, 1947.

2. The First Respondent joined Haffkine Institute as a Laboratory Technician on 1st November, 1958. He was promoted thereafter as a Junior Scientific Officer. The First Respondent retired from service on 31st March, 1992. On the date of his retirement, the First Respondent held the post of Deputy Production Manager. At the time of his retirement, the First

Respondent was paid his retiral dues which inter alia consisted of gratuity in the amount of Rs.56,270/- including an amount of Rs.6,270/- which was transferred by the Government of Maharashtra to the Petitioner when the Petitioner was set up in the year 1975 as a corporate body in pursuance to a decision of the State Government. The proceedings in the present case arose out of an application filed by the First Respondent before the Labour Court under Section 33C(2) claiming that he was entitled to a total payment of gratuity of Rs.1,04,940/-. The First Respondent accordingly claimed the difference between what he asserted was his entitlement and the amount that he was actually paid. The Labour Court allowed the application in part by its order dated 25th September, 2003 holding that the First Respondent was entitled to receive a balance of Rs.43,730/- by way of gratuity from the Petitioner. That has resulted in the institution of the present proceedings under Article 226 of the Constitution.

3. The Haffkine Institute at Mumbai was till 31st August, 1973 functioning as a Department of the Government of Maharashtra. Under a Government Resolution dated 26th November, 1973, the Government initially decided to bifurcate

Haffkine Institute into two autonomous bodies viz. Haffkine Institute for Training, Research and Testing and Haffkine Bio-Pharmaceutical Corporation Limited. Accordingly, a Government Resolution was issued on 30th April, 1975 by which the State Government decided that Haffkine Institute as a Department of the State Government would stand closed and a new institute and corporation would start functioning respectively with effect from 1st September, 1975. The Petitioner is a company incorporated under the Companies Act, 1956 in pursuance of the decision of the State Government. Clause 4 of the Government Resolution dated 30th April, 1975 provided that the Government servants who were engaged by the erstwhile Haffkine Institute would upon being appointed to the new institute or corporation, as the case may be, be absorbed on conditions of service which "should not be less favourable than their existing terms and conditions of service". Clause 4 of the Government Resolution provided as follows :

> "On discharge from the Government Service the Government servants concerned should be provided, with effect from the said posts in the new Institute or Corporation, as the case may be in the same scale and allowances at present admissible to them. On such appointment their terms and conditions of service under the new Institute or Corporation should not be less favourable than their existing terms and conditions of service and in particular, their terms and conditions

> pertaining to their existing scales of pay and allowances, pensionary benefits, provident fund, leave, medical benefits, facility to continue in Government accommodation and other benefits shall be protected as specified in Appendix "A" to this G.R. However, such a protection shall not extend to matters pertaining to their future promotions, which will be governed by the rules and regulations made by their new employers. The service rendered by them under Government will count for their pensionary and all other benefits as if it was a service rendered under the new body."

4. Under clause 6 all employees were given an option either to opt for appointment under the new institute or corporation. Clause 1 of Appendix A to the Government Resolution was to the following effect :

> "i) The entire staff of the Haffkine Institute shall be appointed in the Haffkine Institute for Training, Research and Testing/ Haffkine Bio-Pharmaceutical Corporation Ltd., with full protection of their present emoluments as on the date of appointment till the Haffkine Institute for Training, Research and Testing/ Haffkine Bio-Pharmaceutical Corporation Ltd., frame their own pay structure and service conditions, which will not be less favourable than the present conditions of their service."

5. On 4th December, 1981 a settlement under Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 was entered into between the Petitioner and the Supervisory Staff

Association of the corporation. The Association had submitted a list of demands to the Managing Director of the newly formed corporation covering categories of supervisors from Production Supervisor Grade-A to the General Manager (Production) on the production side and in regard to certain categories on the administration side for a revision in the conditions of service. Accordingly, by the terms of the settlement the conditions of service of the employees of the corporation governed by the settlement came to be revised. In so far as the present dispute is concerned, it would be material to note the provisions of Clause 15 of the settlement which make the following provision in regard to the payment of gratuity :

> "15. Gratuity :
>
> It is agreed by and between the parties that the Supervisors shall be covered by the Payment of Gratuity Act, 1972 and the Rules framed thereafter from time to time by the appropriate authorities."

6. The Petitioner, as already noted earlier, attained the age of superannuation on 31st March, 1992. Clause 15 of the settlement with the Supervisory Staff Association provided that supervisors would be governed by the Payment of Gratuity Act,

1972. At the material date on which the First Respondent retired from service, the ceiling on gratuity under the Payment of Gratuity Act, 1972 was Rs.50,000/-. This ceiling on gratuity under Section 4 (3) was revised upwards to Rs.1 lac by Amending Act 34 of 1994 which was brought into force with effect from 24th May, 1994. The Petitioner was accordingly paid under the ceiling as it then existed viz. Rs.50,000/- and an additional amount of Rs.6,270/- which had been brought forth from the Government of Maharashtra at the time when the Corporation came to be constituted. In the course of deciding the application filed by the First Respondent under Section 33C(2) the Labour Court noted that the enhancement in the ceiling of gratuity from Rs.50,000/- to Rs. 1 lac was effected only on 24th May, 1994 and that the enhancement was prospective and not retrospective. The Labour Court took due note of the fact that the First Respondent had in fact already retired from service by sthe date of the notification namely, 24th May, 1994. However, at the hearing of the application under Section 33C(2), counsel appearing on behalf of the First Respondent produced a Government notification dated 2nd February, 1990 purportedly in support of the submission that the ceiling on gratuity had been relaxed by the State Government to Rs. 1 lac in pursuance thereof.

The Labour Court accepted the submission urged on behalf of the First Respondent and accordingly came to the conclusion that the First Respondent was entitled to gratuity in the total amount of Rs. 1 lac. Consequently the Labour Court directed the Petitioner to pay the difference between the gratuity that has been already paid and the amount of Rs. 1 lac.

7. Counsel appearing for the Petitioner has submitted that under the Government Resolution dated 30th April, 1975 what is protected are the existing terms and conditions of service meaning thereby those which were prevalent on the date on which the new corporation came to be constituted. Thereafter in view of the demands raised by the Supervisory Staff Association, the conditions of the supervisory staff amongst others came to be revised by the industrial settlement dated 4th December, 1981. At the material time when the First Respondent retired, the ceiling on gratuity was Rs.50,000/- and in terms of clause 15 of the settlement, the First Respondent was paid the aforesaid amount. Learned counsel submitted that the Government Resolution dated 2nd February, 1990 ex facie showed that it was applicable to the Haffkine Institute for Training, Research and Testing, Mumbai and

not to the Petitioner which was an independent corporation constituted under the provisions of the Companies Act, 1956.

8. On the other hand, on behalf of the First Respondent learned counsel sought to place reliance on the provisions of the Government Resolution dated 30th April, 1975, particularly the annexure thereto. Learned counsel submitted that Clause 5 of Appendix -A to the Government Resolution adverts to the Government Resolution dated 17th October, 1967 and under the terms thereof, it was urged that the enhancement in the ceiling of gratuity must ipso facto apply to employees of Haffkine Bio–Pharmaceutical Corporation Ltd.

9. While assessing the submissions which have been urged on behalf of the contesting parties, regard must at the outset be had to the terms on which Haffkine Institute came to be bifurcated into two entities with effect from 1st September, 1975. Prior thereto, Haffkine Institute had functioned as a Department of the State Government. By its decision, the State Government decided to bifurcate the erstwhile institute into two entities. The first was Haffkine Bio- Pharmaceutical Corporation Ltd., the Petitioner

before the Court, which was constituted into a body corporate under the Companies Act, 1956. The second was Haffkine Institute for Training, Research and Testing. The subsequent Government Resolutions of the Government to which a reference would be made would demonstrate that Haffkine Institute for Training, Research and Testing has been constituted as an autonomous body albeit with Government aid. Under the Government Resolution dated 30th April, 1975 an option was given to the employees of the Haffkine Institute to opt for service under the newly formed autonomous institute or as the case may be, the Petitioner corporation. Clause 4 of the Government Resolution provided that the conditions of service under the newly formed entities should not be less favourable than the existing terms and conditions of service. Clause 1 of Appendix- A similarly provided for a full protection of the 'present emoluments as on the date of appointment', until the newly formed institute and the corporation frame their own pay structure and conditions of service which again will not be less favourable than the “present conditions” of service. The industrial settlement of 4th December, 1981 was a bilateral agreement under which the service conditions came to be revised. In the course of the settlement, it was agreed between the

Supervisory Staff Association and the management that the Payment of Gratuity Act, 1972 would govern the supervisors of the corporation. There is no dispute about the fact that on the date on which the First Respondent superannuated, the ceiling on gratuity under the Payment of Gratuity Act, 1972 was Rs.50,000/-. The revision took place thereafter on 24th May, 1994 by virtue of the provisions of Amending Act 34 of 1994.

10. On behalf of the First Respondent reliance was placed across the bar during the course of the hearing of the Application under Section 33C(2) on a Government Resolution dated 2nd February, 1990. Now ex facie, a perusal of the Government Resolution would demonstrate that it was applicable to the Haffkine Institute for Training, Research and Testing. The Government Resolution on the plain terms thereof has no application to the Petitioner herein which is a corporate entity constituted in pursuance of the decision of the Government Resolution to bifurcate Haffkine Institute into two bodies. This interpretation of the Government Resolution of 2nd February, 1990 finds support from the subsequent Government Resolutions of the Government dated 23rd September, 1999 and 13th December, 2002. The

Government Resolution dated 23rd September, 1999 raised the ceiling on the payment of gratuity to Rs.2.50 lacs in respect of the Haffkine Institute for Training, Research and Testing. The Government Resolution dated 13th December, 2002 further relaxed the ceiling to Rs.3.50 lacs in the case of the same institute. In other words, the Government Resolutions issued by the Government made a clear reference to Haffkine Institute for Training, Research and Testing, Mumbai, where a relaxation was to be specifically made with reference to that institute alone.

11. The settlement dated 4th December, 1981 between the management of the Petitioner and the Supervisory Staff Association was considered in a judgment of the Division Bench of this Court in **Haffkine Bio pharmaceutical Corporation Ltd. v. V.M. Patki**[1]. The employee in that case had preferred an application under Section 33C(2) claiming that he was entitled to gratuity under the Payment of Gratuity Act, 1972 for his entire period of service of 35 years. The Corporation had given to the employee only the benefit of service rendered under the corporation and had carried out the computation, bearing in mind

1 1991 II CLR 977.

the maximum qualifying salary of Rs.1,000/- under the Industrial Disputes Act, 1947. The employee in that case contended that under Clause 15 of the settlement dated 4th December, 1981 the Supervisory staff was covered by the Payment of Gratuity Act, 1972. The application was allowed and the Petition filed by the corporation was dismissed by a Learned Single Judge. At the hearing of the appeal it was urged on behalf of the corporation that the settlement dated 4th December, 1981 would not apply to an employee who had retired on 31st July, 1981. The Division Bench negatived the submission, holding that the settlement was to be effective from 1st April, 1981. The Division Bench dealt with the second submission and noted that Clause 15 of the settlement dated 4th December, 1981 proceeded on the basis of the guarantee contained in paragraph 4 of the Government Resolution dated 30th April, 1975 under which the existing conditions of service were protected. The appeal was accordingly dismissed. Before this Court, reliance has also been placed upon a judgment of a Learned Single Judge of this Court (Mody, J.) in Misc. Petition 656 of 1976. The Learned Single Judge in that case held that the corporation was bound to apply conditions of service which were not less favourable than those available until 31st August, 1975.

The judgment of the Learned Single Judge was confirmed in an appeal (Appeal 665 of 1980 in Misc. Petition 656 of 1976) decided on 25th November, 1999 by a Division Bench consisting of Dr. B.P. Saraf and D.K. Deshmukh, JJ.

12. In the present case, it has not been demonstrated before the Court that the gratuity which was allowed to the First Respondent by the Corporation was lower than the existing terms and conditions of service which prevailed in the corporation on 31st August, 1975. In these circumstances, the Labour Court was clearly in error in granting to the First Respondent the benefit of an enhanced gratuity purportedly on the basis of the Government Resolution dated 2nd February, 1990. Ex facie, the Government Resolution had no application to the Petitioner Corporation. The Government Resolution dated 17th October, 1967 upon which reliance has been placed by the First Respondent will not carry the case of the First Respondent any further. Clause 5 of Appendix-A to the Government Resolution dated 30th April, 1975 provided that the pensionary liability in respect of services rendered under the Government by a permanent employee who is eligible for pension will be of Government and that the said pension will be payable

when the employee finally retires from the newly formed institute or, as the case may be, the corporation, as per the Government Resolution dated 17th October, 1967. Clause 8 of the Government Resolution dated 17th October, 1967 only provides that the total gratuity admissible in respect of the services rendered under the Government and under the public undertaking should not exceed the amount that would have been admissible had the employee continued in Government service and retired on the same scale which he drew from retirement from the public undertaking. The aforesaid Government Resolution therefore will not advance the case of the First Respondent.

13. In the circumstances, the Petition will have to be allowed and is accordingly allowed. Rule is accordingly made absolute in terms of prayer clause (a). However, in the circumstances of the case, there shall be no order as to costs.